

Title	Qualifications and Education of Subordinate Judicial Officers (adopt California Rules of Court, rule 6.660)
Summary	The proposed rule establishes minimum qualifications for subordinate judicial officers (SJOs) and provides that SJOs must comply with existing judicial education requirements. The rule is required by Government Code section 71622(c).
Source	Administrative Office of the Courts Staff
Staff	<p>Frederick Miller, Senior Manager, Center for Court Research, Innovation, and Planning, 415-865-7709</p> <p>Michael Fischer, Senior Attorney, Office of the General Counsel and Center for Families, Children &amp; the Courts, 415-865-7685</p> <p>Sonya Smith, Attorney, Research and Planning Unit, 415-865-7653</p>
Discussion	<p>Government Code section 71622(c) requires the Judicial Council to adopt “rules establishing the minimum qualifications and training requirements for subordinate judicial officers.” This section took effect January 1, 2001, as part of the Trial Court Employment Protection and Governance Act.</p> <p>Section 71622 also provides that a presiding judge may cross-assign one type of SJO to exercise the powers and perform the duties of another type of SJO, but only if that SJO satisfies the minimum qualifications and training requirements for the new assignment. (Gov. Code, § 71622(d).) Thus, the proposed rule will affect the courts’ ability to cross-assign different types of SJOs.</p> <p><i>Minimum Qualifications</i></p> <p>Numerous laws, many of them county-specific, establish minimum qualifications for SJOs. (Appendix 1 contains a chart summarizing these provisions.) The California Law Revision Commission, which is charged with recommending the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform, is recommending the repeal of code provisions concerning SJO qualifications. (California Law Revision Commission, <i>Statutes Made Obsolete by Trial Court Restructuring (Tentative Recommendation)</i> (November 2001) p. 5.) If the Legislature adopts the commission’s recommendations the affected statutes will be repealed or amended effective January 1, 2003. The proposed rule is intended to replace the SJO qualification provisions that are likely to</p>

be repealed.

The proposed rule mirrors most existing SJO qualification standards, which nearly all require a minimum of 5 years of State Bar membership. (See Gov. Code, §§ 70141.10–70142.16, 72190, 72450, 72701, 73121, 73432.1, 73435.1, 73436.05, 73522, 73564, 73771.1, 74135.1, 74135.6, 74191.7, 74603, 74641.1, 74647, 74698, 74782.1, 74841.5, 74908, 74925, 74964; Welf. & Inst. Code, § 247.) The 5-year standard also parallels the minimum qualifications that applied to municipal court judges before trial court unification. (Cal. Const., art. VI, § 15.)

At least one statute requires SJOs to have a minimum of 10 years of bar membership. (See Gov. Code, § 74949.1.) The proposed rule will lower minimum SJO qualifications in rare instances such as this. However, because the proposed rule establishes only a *minimum*, courts may choose to hire SJOs with more experience.

Under existing standards, some types of SJOs are not subject to the 5-year bar membership requirement. Probate commissioners, traffic referees, and capacity hearing officers must be bar members, but no minimum membership time applies to them. (Gov. Code, §§ 69897, 72400; Welf. & Inst. Code, § 5334.) The proposed rule will raise the minimum qualifications for these SJO positions. However, the rule protects current SJOs by providing that attorneys who are serving as SJOs when the rule takes effect are eligible to be SJOs.

Some have commented that a minimum standard of 10 years of bar membership would be preferable to the current 5-year standard. These commentators favor the higher standard because it parallels the requirement applicable to superior court judges. (Cal. Const., art. VI, § 15.) Because SJOs so often act as temporary superior court judges, a reasonable argument can be made that the same qualification standards should apply to SJOs and judges. At the same time, raising the current 5-year standard to 10 years could cause recruiting problems in some courts, particularly courts with a small pool of State Bar members or courts that assign SJOs to a single case type such as traffic infractions. **The Rules and Project Committee invites comment on both a 10-year and a 5-year bar membership requirement for SJOs.** (A 10-year standard would contain a grandfather clause for existing SJOs, as does this proposal.)

#### Hearing Officers

Current law permits certain health and other professionals and lawyers to act as certification review hearing officers and provides that a qualified probation officer may act as a juvenile hearing officer. (Welf. & Inst. Code, §§ 5256.1, 255.) Lawyers who are appointed as certification review hearing officers or juvenile hearing officers are not subject to a 5-year bar membership requirement.

The California Law Revision Commission's preliminary report *Statutes Made Obsolete by Trial Court Restructuring* does not recommend repeal of the statutes establishing qualifications for certification review hearing officers or juvenile hearing officers. (California Law Revision Commission, *supra*, p. 33.) The proposed rule exempts these hearing officers from the 5-year bar membership requirement to avoid being inconsistent with current law. The California Constitution provides that the rules of court "shall not be inconsistent with statute." (Cal. Const., art. VI, § 6.)

The proposed rule requires certification review hearing officers and juvenile hearing officers to meet the qualifications established in the Welfare and Institutions Code. It also requires these judicial officers to comply with the education requirements applicable to their positions. However, courts will not be able to cross-assign these hearing officers to perform the duties of another type of SJO unless they meet the general SJO qualifications set forth in the rule and comply with the education requirements of the new position.

Although the proposed rule will increase minimum qualifications for some types of SJOs and decrease them in a few rare instances, it will not change existing qualification requirements for the vast majority of SJOs. Establishing minimum qualifications that apply equally to all types of SJOs will enhance the courts' ability to cross-assign SJOs. This will increase flexibility and enable courts to use their judicial resources efficiently.

#### *SJO Education Requirements*

The California Rules of Court and Standards of Judicial Administration establish education standards for SJOs. (See Cal. Rules of Court, rules 970, 1200, 1280.8; Cal. Standards Jud. Admin., §§ 24, 25–25.3.) SJO education requirements also appear in statute. (See Welf. & Inst. Code, §§ 304.7, 601.5. Appendix 2 contains a chart summarizing rules, standards, and statutes concerning SJO education.) Unlike most of the statutes that establish SJO qualifications, the statutes pertaining to SJO education are not recommended for repeal by the California

Law Revision Commission. (California Law Revision Commission, *supra*, p. 33.)

Nearly all SJO education requirements apply to both judges and SJOs; a few are specific to SJOs. (See Welf. & Inst. Code, § 304.7; Cal. Rules of Court, rule 1280.8.) In addition, current judicial education standards are a mix of mandatory and advisory provisions. (See, e.g., Cal. Rules of Court, rule 1280.8 (*mandatory*); Cal. Standards Jud. Admin., § 25.1 (*advisory*).)

The proposed rule provides that SJOs must comply with the judicial education requirements that apply to their assignment. Under the proposed rule, mandatory education requirements remain so. Thus, SJOs will continue to be subject to the mandatory education requirements for new judicial officers contained in rule 970. SJOs who hear family law and child support matters will continue to be subject to the mandatory education requirements contained in rules 1200 and 1280.8, respectively. Advisory education standards, such as those contained in sections 25 and 25.1 of the Standards of Judicial Administration, continue to apply to SJOs, but they are not made mandatory by the proposed rule.

The proposal establishes which education requirements are applicable when an SJO is cross-assigned under Government Code section 71622(d). These SJOs are subject to the education requirements of any position to which they are assigned, even if the position is not their principal assignment, and even if it is a short assignment.

Combined with Government Code section 71622(d), the proposed rule greatly increases the courts' ability to cross-assign different types of SJOs. The education provision in the proposed rule ensures that SJOs who are cross-assigned, even temporarily, will be subject to the applicable judicial education requirements.

Proposed rule 6.660 is attached.

Attachment

Rule 6.660 of the California Rules of Court would be adopted, effective January 1, 2003, to read:

**Rule 6.660. Qualifications and education of subordinate judicial officers**

**(a) [Definition]** For purposes of this rule “subordinate judicial officer” means a person appointed by a court to perform subordinate judicial duties as authorized by Article VI, section 22 of the California Constitution, including but not limited to a commissioner, a referee, and a hearing officer.

**(b) [Qualifications]** Except as provided in subdivision (d), a person is ineligible to be a subordinate judicial officer unless the person is a member of the State Bar and:

(1) Has been admitted to practice law in California for at least five years; or

(2) Is serving as a subordinate judicial officer in a trial court as of January 1, 2003.

**(c) [Education]** A subordinate judicial officer must comply with the education requirements of any position to which he or she is assigned, even if it is not his or her principal assignment. Such requirements include but are not limited to the following, as applicable: California Rules of Court, rules 970, 1200, 1280.8, and Welfare and Institutions Code, § 304.7.

**(d) [Hearing officers]** A person appointed as a hearing officer under Welfare and Institutions Code section 255 or 5256.1 must meet the qualification requirements established by those sections. Such a hearing officer is ineligible to exercise the powers and perform the duties of another type of subordinate judicial officer unless he or she meets the qualifications established in subdivision (b).

Section	Applies to:	Summary of Qualification Requirements <sup>+</sup>
Cal. Const., Art. VI, § 15**	Judges	A person is ineligible to be a judge of a court of record unless for five years immediately preceding selection to a municipal court or ten years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.
Gov. Code, § 71622**	Subordinate Judicial Officers	SJOs must satisfy the minimum qualification and training requirements established by the Judicial Council.
Gov. Code, § 69897**	Probate Commissioner	Shall be: <ul style="list-style-type: none"> <li>• A citizen of the U.S.;</li> <li>• A resident of this state; and</li> <li>• Admitted to practice before the Supreme Court of this state.</li> </ul>
Gov. Code, § 70141.10 (Marin)*	Commissioner (Superior Court)	Shall have been admitted to practice law in CA for not less than five years.
Gov 70141.11 (Contra Costa)*	Commissioner (Superior Court)	Shall have been admitted to practice law in this state for a period of at least five years.
Gov. Code, §§ 70141.12 (Stanislaus)*; 70141.13 (Santa Cruz)*; 70142.11 (Solano)*; 70142.12 (Sonoma)*; 70142.13 (Tulare)*; 70142.16 (Placer).*	Commissioners (Superior Court)	Shall have been admitted to practice law in CA for not less than five years and cannot engage in practice of law while serving as commissioner.  <i>[These statutes contain essentially the same language, but apply to different counties.]</i>
Gov. Code, §§ 72400*	Traffic Referee	A person is ineligible to be a traffic referee unless he is a member of the State Bar of California or has had five years' experience as a justice court judge in this state within the eight years immediately preceding his appointment as a traffic referee.  <i>[Note that this section requires only bar membership; unlike most other SJO qualification statutes it does not require five years bar membership.]</i>
Gov. Code, § 72450*	Traffic Trial Commissioners	Shall have the qualifications of a judge of the municipal court and shall not engage in the private practice of law. (See Cal. Const. Art. VI, Sec. 15)
Gov. Code, §§ 72701 (Los	Commissioners	Shall have the qualifications of a judge of the municipal court. (See Cal. Const. Art.

\* The California Law Revision Commission's preliminary report *Statutes Made Obsolete by Trial Court Restructuring* (November 2001) recommends repeal of section.

\*\* The California Law Revision Commission's preliminary report *Statutes Made Obsolete by Trial Court Restructuring* (November 2001) recommends amendment of section to delete provisions relating to SJO qualifications.

Section	Applies to:	Summary of Qualification Requirements <sup>+</sup>
Angeles)*; 73121 (San Bernardino)*; 73363 (Contra Costa)*; 73432.1 (Kern-Bakersfield)*; 73435.1 & 73436.05 (Kern-East and North)*; 73522 (San Mateo)*; 73564 (Monterey)*; 73771.1 (Marin)*; 74135.1 (Western Riverside)*; 74135.6 (Riverside)*; 74191.7 (Sacramento)*; 74602 (San Luis Obispo)*; 74622 (Santa Clara)*; 74641.1 & 74647(b) (Santa Barbara)*; 74698 (Santa Cruz)*; 74782.1 (Stanislaus)*; 74841.5-Traffic Trial Commissioner (Solano; Vallejo-Benecia)*; 74908 (Ventura)*; 74925 (Tulare)*; 74964 (Yolo)*	(In former Municipal Courts)	VI, Sec. 15)  <i>[These statutes contain essentially the same language regarding commissioner qualifications, but apply to different counties.]</i>
Gov. Code, § 74949.1 (Napa)*	Commissioner (In former Municipal Court)	Same qualifications as superior court judge. (See Cal. Const. Art. VI, Sec. 15)  <i>[Note that this section requires a minimum of 10 years bar membership for the commissioner rather than the prevailing standard of five years bar membership.]</i>
Welf. & Inst. Code, § 247*	Juvenile Referees	Every referee first appointed on or after January 1, 1977, shall have been admitted to practice law in this state and, in addition, shall have been admitted to practice law in this state for a period of not less than five years or in any other state and this state for a combined period of not less than 10 years. Nothing in this section shall be construed to apply to the qualifications of any referee first appointed prior to January 1, 1977.
Welf. & Inst. Code, § 255**	Juvenile Hearing Officers	The juvenile court may appoint a subordinate judicial officer of “suitable experience,” who may be . . . a probation officer or assistant or deputy probation officer to serve as a juvenile hearing officer.

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Section	Applies to:	Summary of Qualification Requirements <sup>+</sup>
Welf. & Inst. Code, § 5256.1	Certification Review Hearing Officers	Certification reviews shall be conducted by a commissioner, a referee, or a certification review hearing officer who may be a administrative law hearing officer, a doctor, a psychologist, a registered nurse, a lawyer, a certified law student, a clinical social worker, or a family counselor. Some of these professionals are required to have five years experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel of designated professionals (non-court professionals).
Welf. & Inst. Code, § 5334	Capacity Hearing Officers	Capacity hearings shall be conducted by a judge, a commissioner or referee, or a hearing officer. All commissioners, referees, and hearing officers shall be appointed from a list of attorneys unanimously approved by a panel of designated professionals (non-court professionals).
Cal. Rules of Court, rule 1726	Temporary Judges in Small Claims Court	Temporary judges in small claims court shall: <ul style="list-style-type: none"> <li>• Be a member of the State Bar for at least 5 years;</li> <li>• Attend and complete a training program for temporary judges provided by the appointing court; and</li> <li>• Be familiar with publications identified in Code of CCP § 116.930.</li> </ul>

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## 2. JUDICIAL EDUCATION

### A. Code Sections

Section	Case type	Applies to:	Summary of Education Provisions <sup>+</sup>
Gov. Code, § 68551	All	Judicial Council	The Judicial Council is authorized to conduct institutes and seminars for the purpose of orienting judges to new judicial assignments, keeping them informed concerning new developments in the law, and promoting uniformity in judicial procedure. Such seminars shall include consideration of juvenile court proceedings, sentencing practices in criminal cases and the handling of traffic cases.
Gov. Code, § 68553	Family Law	Judicial Council	Judicial Council established training shall include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.
Gov. Code, § 68555	Domestic Violence Matters	Judicial Council	The Judicial Council shall establish training programs for judicial officers who perform duties in domestic violence matters. Training programs shall include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. The training programs shall include instruction in all aspects of domestic violence.
Welf. & Inst. Code, § 304.7	Juvenile Dep. Matters	Judicial Council, Commissioners and Referees	The Judicial Council shall develop standards for the education and training of all judges who conduct hearings pursuant to section 300. Any commissioner or referee who is assigned to conduct hearings held pursuant to section 300 shall meet the minimum education and training standards established by the Judicial Council.
Wel. & Inst. Code, § 601.5	Juvenile Del. Matters	Juvenile Courts with At-Risk Youth Programs	In counties that have established an At-Risk Youth Early Intervention Program, the juvenile court shall select a judicial officer to serve as a liaison to the program. The court shall take steps to train or familiarize any judicial officers who hear these matters on the operations, procedures, and services of the program.
Penal Code, § 1170.5	Criminal	Judicial Council	The Judicial Council shall conduct annual sentencing institutes.

## B. Rules of Court

Rule	Case Type	Applies to:	Summary of Education Provisions
Cal. Rules of Court, rule 970	All	Judicial Officers— Judges and SJOs  Presiding Judges	<ul style="list-style-type: none"> <li>• New judicial officers shall attend a one-week orientation within six months of taking the oath.</li> <li>• Within two years of taking the oath as a judicial officer, judicial officers must complete the two-week Judicial College.</li> <li>• Presiding judges shall grant sufficient educational leave to enable judicial officers to meet above requirements.</li> </ul>
Cal. Rules of Court, rule 1200	Family Law	Judicial Officers— Judges and SJOs (Whose principal assignment is family law.)	<p>Judicial officers whose principal assignment is to hear family law matters shall, if funds are available:</p> <ul style="list-style-type: none"> <li>• Attend a basic family law education course within three months of beginning a family law assignment, or within one year of beginning a family law assignment in courts with five or fewer judges.</li> <li>• Attend a periodic update on new developments in California family law and procedure.</li> <li>• To the extent that time and resources are available, the judicial officer shall attend additional educational programs on other aspects of family law.</li> </ul>
Cal. Rules of Court, rule 1280.8	Family Court—Child Support Matters	Commissioners (Whose principal judicial assignment is to hear child support matters.)	<p>Every commissioner whose principal assignment is to hear child support matters shall attend the following judicial education programs:</p> <ul style="list-style-type: none"> <li>• A basic education program on California child support law and procedure.</li> <li>• An update on new developments in child support law and procedure at least once each calendar year.</li> <li>• To the extent that time and resources are available, commissioners are encouraged to attend additional educational programs on child support and other related family law issues.</li> </ul>
Cal. Rules of Court, rule 1726	Small Claims	Temporary Judges in Small Claims Court	<ul style="list-style-type: none"> <li>• To qualify for appointment as a temporary judge in small claims court, a person shall have. . . .attended and completed a training program for temporary judges provided by the appointing court. The training program shall cover: judicial ethics, substantive law, small claims procedures, and the conduct of small claims hearings.</li> </ul>

### C. Standards of Judicial Administration

Standard	Case Type	Applies to:	Summary of Education Provisions
Cal. Standards Jud. Admin., §24	Juvenile	Presiding Judges	The presiding judge of a juvenile court should develop orientation and in-service training programs for judicial officers.
Cal. Standards Jud. Admin., §25	All	Judicial Branch/ CJER	Standard establishes general objectives of Judicial Branch education and provides that the Center for Judicial Education and Research (CJER) is responsible for developing and maintaining a comprehensive education program for the judicial branch.
Cal. Standards Jud. Admin., §25.1	All	Judicial Officers— Judges and SJOs  Presiding Judges  (and others in Judicial Branch)	<ul style="list-style-type: none"> <li>• Judicial officers should consider participation in judicial education activities to be an official judicial duty.</li> <li>• Presiding judges should make judicial education plans for their courts.</li> <li>• A new judicial officer should participate in judicial education as required by rule 970.</li> <li>• After one year on the bench, judicial officers should be granted at least eight court days per calendar year to attend continuing education programs relating to the judicial officer's responsibilities or court assignment.</li> <li>• Retired judges seeking to sit on assignment should participate in judicial education activities.</li> <li>• Judicial officers should receive education on fairness. Such education should include training on race/ethnicity, gender, sexual orientation, persons with disabilities, and sexual harassment.</li> <li>• Judicial officers should be granted leave to serve as faculty in judicial education programs and on judicial education committees.</li> </ul>

<b>Standard</b>	<b>Case Type</b>	<b>Applies to:</b>	<b>Summary of Education Provisions</b>
Cal. Standards Jud. Admin., §25.2	Jury Trials, Family, Juvenile Dependency	Judicial Officers— Judges and SJOs	<ul style="list-style-type: none"> <li>• Jury trials. A judicial officer assigned to jury trials should use CJER materials or attend CJER programs on jury voir dire and the treatment of jurors.</li> <li>• Family court. Within three months of being assigned to family court, a judicial officer should attend a basic educational program on California family law and procedure designed primarily for judicial officers. Judicial officers should attend a periodic update on new developments in California family law and procedure.</li> <li>• Juvenile dependency court. Within one year of beginning a juvenile dependency assignment, the judicial officer should receive basic education on California juvenile dependency law and procedure designed primarily for judicial officers. Judicial officers should attend the CJER Juvenile Law and Procedure Institute and one additional education program related to juvenile dependency law.</li> </ul>
Cal. Standards Jud. Admin., § 25.3	Jury Trials, Family, Juvenile Dependency	CJER	CJER should provide a comprehensive educational curriculum for judicial officers in the following assignments: jury trials, family court, and juvenile dependency court.